

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERNESTO GARCIA, :
Plaintiff, :
: 22 Civ. 9172 (LGS)
-against- :
: ORDER
2390 C LLC, ET AL., :
Defendants. :
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, Plaintiff commenced this action on October 26, 2022, by filing the Complaint (Dkt. No. 1);

WHEREAS, on November 10, 2022, Plaintiff filed two affidavits of service affirming that service had been effected on October 28, 2022, through the New York Secretary of State, but both affidavits stated only that Defendant Denali Management Inc. had been served, and neither referenced Defendant 2390 C LLC (Dkt. Nos. 7, 8);

WHEREAS, the Order, dated November 16, 2022, required the parties to file a proposed joint letter and case management plan no later than seven days before the initial pretrial conference (Dkt. No. 9);

WHEREAS, the initial pretrial conference originally was scheduled for January 4, 2023;

WHEREAS, the parties failed to file the joint letter or proposed case management plan;

WHEREAS, at least Defendant Denali Management Inc. was required to respond to the Complaint by November 18, 2022, and neither Defendant has responded to the Complaint;

WHEREAS, the Order, dated December 30, 2022, adjourned the initial pretrial conference to January 11, 2023, and directed Plaintiff, if not in touch with Defendants, to file a status letter requesting further adjournment of the initial pretrial conference and proposing a date prior to the conference to present an Order to Show Cause for default judgment (Dkt. No. 10);

WHEREAS, on January 4, 2023, Plaintiff filed a letter requesting an adjournment of the initial pretrial conference until February 3, 2023, and proposing a date of January 23, 2023, for filing of an Order to Show Cause for default judgment (Dkt. No. 11);

WHEREAS, the Order, dated January 5, 2023, adjourned the initial pretrial conference to February 8, 2023, again required the parties to file a proposed joint letter and case management plan no later than seven days before that conference and set a deadline for Plaintiff to file an Order to Show Cause for default judgment of January 23, 2023 (Dkt. No. 12);

WHEREAS, Plaintiff did not timely file a proposed order to show cause for default judgment;

WHEREAS, on February 1, 2023, Plaintiff did not file a proposed joint letter and case management plan but belatedly filed a proposed clerk's certificate of default, which was rejected because Plaintiff failed to provide proof of service of Defendant 2390 C LLC (Dkt. Nos. 13, 14);

WHEREAS, the Order dated February 2, 2023, adjourned the initial pretrial conference to March 8, 2023, and again required the parties to file a proposed joint letter and case management plan no later than seven days before that conference, and also directed Plaintiff either to (1) correct the deficient proof of service and file an Order to Show Cause for default judgment by February 8, 2023, if Plaintiff had indeed served Defendant 2390 C LLC, or (2) serve Defendant 2390 C LLC and file proof of service by February 8, 2023, along with a status letter proposing next steps and a further adjournment of the initial pretrial conference (Dkt. No. 15);

WHEREAS, the February 2, 2023, Order also directed Plaintiff, by February 8, 2023, to explain in one of the above submissions or a separate letter why Plaintiff had consistently failed to comply with Orders and to meet deadlines, and warned Plaintiff that failure to comply with any

additional Orders may result in sanctions, including but not necessarily limited to dismissal for failure to prosecute (Dkt. No. 15);

WHEREAS, on February 6, 2023, Plaintiff filed purported proof of service of Defendant 2390 C LLC, which appears to be a doctored version of the affidavit of service that Plaintiff had previously filed on November 10, 2022, dated and purportedly signed and notarized on October 28, 2022;

WHEREAS, after three more failed attempts to obtain a clerk's certificate of default (Dkt. Nos. 17-22), the Clerk of Court issued a Certificate of Default as to both Defendants (Dkt. No. 25);

WHEREAS, on February 8, 2023, Plaintiff filed a proposed Order to Show Cause for Default Judgment, along with a proposed Default Judgment and other supporting materials, though that filing also was rejected (Dkt. Nos. 26-28);

WHEREAS, Plaintiff did not comply with the Order requiring an explanation of why Plaintiff has repeatedly failed to comply with Orders and meet deadlines in this case. It is hereby

ORDERED that the Complaint is dismissed, without prejudice, for failure to prosecute and for failure to comply with multiple Court Orders, pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk of Court is respectfully directed to close the case.

Dated: February 9, 2023
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE